MT LEGISLATIVE HISTORY

Chapter 333 1989

Bill (H) 349 S _____ Original bill & hist. ✓C

H. Committee on Labor & Employment Relations S. Committee on Labor & Employment Relations

Hearing Date(s)			Hearing Date(s)		
Jan 31	✓	C	Mar 07	✓	C
Feb 02	✓	C	Mar 09	✓	C
_____		C	_____		C
_____		C	_____		C
Date Out	Feb 03	✓C	Mar 07	✓	C

There are no House subcommittee minutes.

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 347

INTRODUCED BY Smith

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO WORKERS' COMPENSATION; ALLOWING ASSESSMENT OF A PENALTY FOR FAILURE TO GIVE PROPER NOTICE OF CANCELLATION OF A POLICY; CLARIFYING A WORKER'S JOB POOL AREA; CLARIFYING A WORKER'S ENTITLEMENT TO TOTAL REHABILITATION BENEFITS; ALLOWING REIMBURSEMENT FOR EXPENSES INCURRED IN TRAVEL TO MEDICAL PROVIDERS; CLARIFYING THAT AN INSURER IS NOT REQUIRED TO GIVE NOTICE PRIOR TO REDUCING BIWEEKLY BENEFITS; COORDINATING THE DEFINITIONS OF WAGES, PAYROLL, AND EARNINGS; ALLOWING THE DIVISION TO RETROACTIVELY APPLY EXPERIENCE MODIFICATION FACTORS TO THE EXPERIENCE RATING SYSTEM; PROVIDING FOR PENALTIES; ALLOWING ELECTION OF LEVELS OF COVERAGE BY PARTNERS AND SOLE PROPRIETORS; DEFINING WAGES FOR GOVERNMENT EMPLOYMENTS; ALLOWING DISCLOSURE OF HEALTH CARE INFORMATION BY HEALTH CARE PROVIDERS TO INSURERS; PROVIDING A PENALTY FOR NOT FILING REPORTS OF ACCIDENTS; PROVIDING THAT A WORKERS' COMPENSATION JUDGE MAY BE DISQUALIFIED FROM HEARING A MATTER BEFORE HIM; AMENDING SECTIONS 39-71-116, 39-71-118, 39-71-123, 39-71-302, 39-71-307, 39-71-609, 39-71-704, 39-71-736, 39-71-1011, 39-71-1017, 39-71-1023, 39-71-2205, 39-71-2304, 39-71-2901, 39-71-2903, AND 50-16-527, MCA; AND PROVIDING FOR EFFECTIVE DATES AND RETROACTIVE APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-2205, MCA, is amended to read:

"39-71-2205. Policy ~~remains~~ in effect until canceled or replaced -- twenty-day notification of cancellation required -- penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the division at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) (a) The division may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to division rules."

Section 2. Section 39-71-1011, MCA, is amended to read:

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"**39-71-1011. Definitions.** As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means one who has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

(3) "I.W.R.P." means an individualized, written rehabilitation program prepared by the department of social and rehabilitation services.

(4) "Rehabilitation benefits" means benefits provided in 39-71-1003 and 39-71-1023 through 39-71-1025.

(5) "Rehabilitation provider" means a rehabilitation counselor, other than the department of social and rehabilitation services, certified by the board for rehabilitation certification and designated by the insurer to the division.

(6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services to assist a disabled worker to return to work.

(7) (a) "Worker's job pool" means those jobs typically

available for which a worker is qualified, consistent with the worker's age, education, vocational experience and aptitude and compatible with the worker's physical capacities and limitations as the result of the worker's injury. Lack of immediate job openings is not a factor to be considered.

(b) A worker's job pool may be either local or statewide, as follows:

(i) a local job ~~is one either in a central city that has within its economically integrated geographical area a population of less than 50,000 or in a city with a population of more than 50,000 as determined by the division~~ pool is the job service office area that includes the worker's residence; ~~or~~ and

(ii) a the statewide job pool is ~~one anywhere in~~ the state of Montana."

Section 3. Section 39-71-1023, MCA, is amended to read:

"**39-71-1023. Total rehabilitation benefits during period of rehabilitation services -- limitation -- termination.** (1) A worker who no longer is temporarily totally disabled but meets the definition of a disabled worker may be eligible for total rehabilitation benefits.

(2) Eligibility for total rehabilitation benefits begins on the date of maximum healing ~~or~~ and continues for a

period not to exceed 26 weeks after the date notice is given to the division by the insurer that a rehabilitation provider has been designated~~,-whichever-is-later~~.

(3) Benefits must be paid at the disabled worker's temporary total disability rate~~,-for-a-period-not--exceeding-26--weeks--from-the-date-of-eligibility,-except-that-the~~ The division may extend the benefit period for good cause. The insurer may extend the ~~benefits~~ benefit period without division approval but must notify the division of the extension.

(4) Total rehabilitation benefits under this section terminate when:

(a) a worker returns to work;

(b) a worker is qualified to return to work under the priorities in 39-71-1012 pursuant to a division order; or

(c) an I.W.R.P. is submitted to the division by the department of social and rehabilitation services.

(5) The insurer shall provide written notice to the worker and division that benefits have been terminated."

Section 4. Section 39-71-704, MCA, is amended to read:

"**39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates.** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following ~~shall~~ must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, ~~shall~~ must be established annually by the workers' compensation division and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be

based on the median fees as billed to the state compensation insurance fund during the year preceding the adoption of the schedule. The division shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules ~~shall~~ must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the division shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The division may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, and ending January 1, 1990, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), the hospital rates payable by insurers must be limited to those set in January 1988, until December 31, 1989."

Section 5. Section 39-71-609, MCA, is amended to read:

"**39-71-609. Denial of claim after payments made or termination of** all **benefits by insurer -- fourteen days' notice required.** If an insurer determines to deny a claim on

which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the division. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work."

Section 6. Section 39-71-736, MCA, is amended to read:

"**39-71-736. Compensation -- from what date paid.** (1) (a) No compensation may be paid for the first 6 ~~days' loss of wages~~ consecutive days the claimant is totally disabled and unable to work due to an injury. A claimant is eligible for compensation starting with the 7th day ~~of wage loss~~.

(b) However, separate benefits of medical and hospital services ~~shall~~ must be furnished from the date of injury.

(2) For the purpose of this section, an injured worker is not considered to ~~have a wage loss~~ be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period."

Section 7. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise

requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the

injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(4) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(5) "Days" means calendar days, unless otherwise specified.

(6) "Department" means the department of labor and industry.

(7) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state compensation insurance fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year~~,~~. ~~provided, that an~~ However, an estimate may be made by the division for any employer starting in business ~~where~~ if no average payrolls are available~~, such~~. This estimate is to be adjusted by additional payment by the employer or refund by the division, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(19) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably

safe for use for the particular purpose for which they are furnished.

(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(22) "Year", unless otherwise specified, means calendar year."

Section 8. Section 39-71-302, MCA, is amended to read:

"**39-71-302. What included in computing payroll.** In computing the payroll, ~~the entire compensation~~ all wages, as defined in 39-71-123, received by every worker employed under this chapter ~~is~~ are included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise."

Section 9. Section 39-71-1017, MCA, is amended to read:

"**39-71-1017. Rehabilitation panel report.** (1) The rehabilitation panel shall:

(a) review all records, statements, and other pertinent information; and

(b) prepare a report to the division, with copies to the insurer and worker.

(2) The report must:

(a) identify the first appropriate rehabilitation

option by following the priorities set forth in 39-71-1012; and

(b) contain findings of why a higher listed priority, if any, is not appropriate.

(3) Depending on which option the panel identifies as appropriate, the report also must contain findings that:

(a) identify jobs in the local or statewide job pool and the worker's anticipated ~~earnings~~ wages from each job;

(b) describe an appropriate on-the-job training program, the worker's anticipated ~~earnings~~ wages, and anticipated insurer's contribution, if any;

(c) describe an appropriate retraining program, short- or long-term, the employment opportunities anticipated upon the worker's completion of the program, and the worker's anticipated ~~earnings~~ wages; or

(d) describe the worker's potential for specific self-employment, limitations the worker might have in such self-employment and any assistance necessary, and the worker's anticipated ~~earnings~~ wages.

(4) An insurer or a worker on his own motion may submit information to the panel prior to the time the panel issues its final report."

Section 10. Section 39-71-2304, MCA, is amended to read:

"**39-71-2304. Determination of rates and**

classifications by division. (1) The division is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience may be necessary or expedient, provided that no change in the classification or rates prescribed ~~shall~~ may be effective until 30 days after the date of the order making such change.

(2) The industrial insurance program ~~shall~~ must be neither more nor less than self-supporting. Employments affected by the provisions hereof ~~shall~~ must be divided by the division into classes, whose rates may be readjusted at such times as the division may actuarially determine. Separate accounts ~~shall~~ must be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation and dividends, the industrial insurance expendable trust fund ~~shall~~ must be one and indivisible.

(3) The division shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound industrial insurance fund and the creation of actuarially sound surplus and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk and shall utilize the

experience and information afforded to it.

(4) In addition, compensation plan No. 3 ~~shall~~ must use an experience rating system for employers enrolled under it. This system ~~shall~~ must reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume discount. The division may retroactively apply experience modification factors.

(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance expendable trust fund allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the division. The amounts of such reserves and surplus ~~shall~~ must be as determined from time to time by the division to be adequate but not excessive for the purposes intended.

(6) The division shall charge a minimum annual premium on each contract and policy of insurance sufficient to cover the cost of administering the contract or policy.

(7) (a) Except in a case of fraud, the division may not assess an additional quarterly premium later than 3 years after the date on which the quarterly premium became

due.

(b) An employer may not receive a refund or an adjustment later than 3 years after the date on which the quarterly premium became due."

Section 11. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and workman defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of

53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; or

(e) an airman or other person employed as a volunteer under 67-2-105.

(2) (a) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such election, the employer must serve upon the employer's insurer written notice naming the

partners or sole proprietor to be covered~~,--and-no~~ and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (d). A partner or sole proprietor ~~shall--be--deemed~~ is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the ~~insurance--carrier--shall assume--a--salary--or--wage--of--such-electing-employee-to-be~~ electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

Section 12. Section 39-71-123, MCA, is amended to read:

"**39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the

regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee travel expense reimbursements or allowances for meals, lodging, travel, and subsistence;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's

wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual earnings must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual earnings in his regular employment, except self-employment as a sole proprietor or partner, from which he is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual earnings of all employments, except self-employment as a sole proprietor or partner, from which the employee is disabled by the injury incurred."

Section 13. Section 50-16-527, MCA, is amended to read:

"**50-16-527. Patient authorization -- retention -- effective period -- exception.** (1) A health care provider shall retain each authorization or revocation in conjunction

with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under 50-16-528. Health care information disclosed under such an authorization is otherwise subject to this part. An authorization written after October 1, 1987, becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider. The disclosure authorized by this subsection relates only to information concerning the claimant's condition. This authorization is effective only as long as the claimant is entitled to benefits."

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Section 14. Section 39-71-307, MCA, is amended to read:

"**39-71-307. Employers and insurers to file reports of accidents** -- penalty. (1) Every employer of labor and every insurer is hereby required to file with the division, under such rules as the division may from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the division in such form and such detail as the division shall from time to time prescribe and shall make specific answers to all questions required by the division under its rules; except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

(2) Every insurance company transacting business under this chapter shall, at the time and in the manner prescribed by the division, make and file with the division such reports of accidents as the division may require.

(3) An employer, insurer, or adjuster who refuses or neglects to submit to the division reports necessary for the proper review of a claim, as provided in subsection (1), may be assessed a penalty of not less than $200 or more than $500 for each offense. The division shall assess and collect the penalty. An insurer may contest a penalty assessment in

a hearing conducted according to division rules."

Section 15. Section 39-71-2901, MCA, is amended to read:

"**39-71-2901. Location of office -- court powers.** (1) The principal office of the workers' compensation judge ~~shall be~~ is in the city of Helena.

(2) The workers' compensation court has power to:

(a) preserve and enforce order in its immediate presence;

(b) provide for the orderly conduct of proceedings before it and its officers;

(c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;

(d) compel the attendance of persons to testify; and

(e) punish for contempt in the same manner and by the same procedures as in district court.

(3) The workers' compensation judge is an administrative law judge. The position is created by law, and the powers and duties are limited to those provided by applicable statute."

Section 16. Section 39-71-2903, MCA, is amended to read:

"**39-71-2903. Administrative procedure act and rules of evidence applicable** -- disqualification of workers'

compensation judge. (1) All proceedings and hearings before the workers' compensation judge ~~shall~~ must be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.

(2) The workers' compensation judge is bound by common law and statutory rules of evidence.

(3) The workers' compensation judge may be disqualified from a matter before him in the same manner that a hearing examiner may be disqualified under 2-4-611. If a party requests disqualification, the workers' compensation judge shall promptly refer the issue to a district court judge, who shall conduct a hearing on the request. If the district court judge finds that there is sufficient cause for disqualification of the workers' compensation judge, the district court judge may hear the merits of the matter himself or may invite another district court judge to accept jurisdiction of the matter."

NEW SECTION. **Section 17.** **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 18.** **Effective dates -- retroactive applicability.** (1) [Sections 13 and 15 through 18] are effective on passage and approval.

(2) (a) [Section 13] applies retroactively, within the

meaning of 1-2-109, to all requests for health care information in workers' compensation claims.

(b) [Sections 15 and 16] apply retroactively, within the meaning of 1-2-109, to any case pending before the workers' compensation judge that has not been heard on the merits.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB347 , as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled: "An act to generally revise the laws relating to Workers' Compensation; allowing assessment of a penalty for failure to give proper notice of cancellation of a policy; clarifying a worker's job pool area; clarifying a worker's entitlement to total rehabilitation benefits; allowing reimbursement for expenses incurred in travel to medical providers; clarifying that an insurer is not required to give notice prior to reducing biweekly benefits; coordinating the definitions of wages, payroll, and earnings; allowing the division to retroactively apply experience modification factors to the experience rating system; providing for penalties; allowing election of levels of coverage by partners and sole proprietors; defining wages for government employments; allowing disclosure of health care information by health care providers to insurers; providing a penalty for not filing reports of accidents; providing that a Workers' Compensation judge may be disqualified from hearing a matter before him; amending Sections 39-71-116, 39-71-118, 39-71-123, 39-71-302, 39-71-307, 39-71-609, 39-71-704, 39-71-736, 39-71-1011, 39-71-1017, 39-71-1023, 39-71-2205, 39-71-2304, 39-71-2901, 39-71-2903 and 50-16-527, MCA; and providing for effective dates and retroactive applicability dates."

ASSUMPTIONS:

1. The ability to assess a penalty for noncompliance with a requirement for notification would stimulate conformance with the statute. However, funds generated by the maximum $200 penalty would be negligible.
2. No operational impact. Insurers currently reimburse injured workers for travel costs when required. Amendments only reflect a standard by which all insurers will conform. Negligible trust fund impact.
3. No operational fiscal impact. Trust fund compensation benefit levels could be slightly impacted by the change from six days of wage loss to six consecutive days. Benefit costs primarily for persons who work less than 40 hours would be impacted. The degree is unknown but considered to be minimum.
4. State Fund will require a listing of employers who had estimated wages.
5. Revenue generated by positive experience modification factors will be offset by revenue reductions from negative experience modification factors.
6. State Fund will want to track the elected coverage for partners and sole proprietors.

FISCAL IMPACT:

	FY90 Current Law	FY90 Proposed Law	Difference
Expenditures:	$9,525,912	$9,540,612	$ 14,700
Revenues:	$9,525,912	$9,540,612	$ 14,700
Fund Impact:			
State Special	$ -0-	$ -0-	$ -0-

This will be a one-time start up cost with no fiscal impact in FY91.

Ray Shackleford 1/31/89
RAY SHACKLEFORD, BUDGET DIRECTOR / DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Clyde B. Smith 1-31-89
CLYDE B. SMITH, PRIMARY SPONSOR DATE

Fiscal Note for HB347, as introduced

HB 347

Form CS-32
Rev. 1985

STATUS SHEET

51st LEGISLATIVE SESSION

(HOUSE) LABOR AND EMPLOYMENT RELATIONS COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 21	1-2-89	1-12-89				1-19-89					
HB 28	"	1-19-89		1-24		1-24-89					
HB 49	"	1-17-89		Tabled 1-24							
HB 96	1-9-89	1-19-89	Withdrawn by sponsor								
HB 99	"	1-19-89	1-19-89								
HB 156	1-16-89	1-26-89			1-31-89						
HB 157	1-26-89	"	Holding		1-31-89		Subcommittee 2-7		Tabled on 2-16-89		
HB 184	1-16-89	1-24-89		Tabled 1-24-89							
HB 214	1-17-89	1-24-89		1-24-89							
249	1-18-89	1-24-89		1-24							
323	1-23-89	1-31-89	Tabled 2-2-89								
339	1-23-89	1-31-89	Holding			2-7					
349	"	1-31				2-2					
348	"	1-31				1-31-89					

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Angela Russell, on January 31, 1989, at 3:00 P.M.

ROLL CALL

Members Present: All present.

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Staff Attorney.

Announcements/Discussion: Chairman Russell announced that there are four bills to be heard this afternoon and they will be taken chronologically.

HEARING ON HB 323

Presentation and Opening Statement by Sponsor:

REP. DRISCOLL: HB 323 defines "employer" in the human rights statute. The present human rights statute seems to discriminate against independent contractors. The bill states that independent contractors may not be discriminated against based on race, sex, age, handicap, marital status or religion.

List of Testifying Proponents and What Group They Represent:

ANN MacINTYRE, Administrator of the Human Rights Division.

List of Testifying Opponents and What Group They Represent:

None.

Testimony:

ANN MacINTYRE, proponent. She read verbatim the written material attached hereto as Exhibit #1.

Questions From Committee Members:

None.

The home health care services, and this is based on 40 hours so it isn't based on the $50 per day, the home health care in four places we called runs from approximately $1,100 to about $1,500 a month, for home health care attendants. We have about 10 or 11 cases in the state fund where we are paying domiciliary care to the spouse, to the brother, or the sister-in-law, those presently are negotiated based on what care they think is needed at the time. The highest one we pay for is $1,600 and the lowest is $200 per month, so we pay the ranges in between.

O'KEEFE: In this case the wife put 139 hours a week into home health care?

MURPHY: No, the court awarded 139 hours a week for home health care and the remaining 29 -- whatever it takes to get the full 24 hours per day -- per week to home health care attendant, so they split it. They indicated that the wife should be paid for 139 hours a week and to relieve her, 28 for the home health care attendant. As you read that case you will note that it isn't every second, every minute, every hour, having to be there. It's having to be there in case something goes wrong. I understand this individual fished, hunted and did a lot of the normal things. He just had problems with the injury as far as the memory or loss thereof and that type of thing.

Closing by Sponsor:

THOMAS: I think we are getting a better idea of what we are looking at in this case. Domiciliary care is not meant to be a replacement for necessary nursing or necessary medical care. The idea is to try to find a reasonable agreement on what we can do in that area. How much should a spouse be paid for this service that is necessary in many cases, and how much can we afford.

RUSSELL: This closes the hearing on HB 339.

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HEARING ON HB 347

Presentation and Opening Statement by Sponsor:

SMITH: HB 347 generally revises various sections of the laws relating to workers' compensation. The sections include some housekeeping changes, language clarification, and changes which will allow the system to work more effectively. None of the sections

seriously impact the coverage or benefit sections of the current law. The division will briefly explain the individual sections included in the bill. I have several amendments which I am requesting the committee to consider. I understand that these amendments have been worked out by all the interested parties, including the division, state fund, trial lawyers, labor and self insurers. Based on this agreement, we are requesting our committee to delete from the bill Sections 6, 15 and 16 because we believe it would be in the best interests of the system. The other wording and language changes add clarification as to the intent of the sections. Many people have worked extremely hard to present an acceptable bill to this committee and I ask that you give it a DO PASS as amended. (Amendments attached as Exhibit #3).

List of Testifying Proponents and What Group They Represent:

MIKE MICONE, Commissioner of the Department of Labor and Industry.

BILL PALMER, Interim Administrator of the Division of Workers' Compensation.

MICHAEL SHERWOOD, Montana Trial Lawyers Association.

GEORGE WOOD, Executive Secretary of the Montana Self Insurers Association.

DON JUDGE, Montana AFL-CIO.

NORM GROSFIELD, Attorney.

List of Testifying Opponents and What Group They Represent:

None.

Testimony.

MIKE MICONE, proponent. When the bill was drafted we brought together a number of representatives not only from the division, but from labor, legislative body, private insurance sector and a couple of employers. It was our hope that we could work out all of the problems within that bill prior to coming before you. I think the amendments that have been presented to you by Rep. Smith have accomplished that. We think it will clean up a number of matters that were in conflict as a result of the passage of SB 315 (two years ago), and we think it is going to answer some of the concerns of the court. We ask that you support HB 347.

BILL PALMER, proponent. Just for your information I would like to take you through the bill and explain what each of the sections mean because there is a lot of material in there that doesn't just address the state fund, or it doesn't just address the insurance compliance. There are a number of things that affect the Montana Workers' Compensation system. (Read from written text, attached hereto as Exhibit #4).

MICHAEL SHERWOOD, proponent. Specifically, we support this bill as amended. We encourage you to adopt the amendments as proposed. These are amendments we have worked out over the past ten days. The Trial Lawyers representing injured victims want these amendments.

CHARLES WOOD, proponent. This is an agreed upon package. Neither Mr. Sherwood nor I agree that everything in this bill as amended is perfect for us but it was a matter of give and take in order to come up with the amendments we felt were necessary. We support this legislation as amended.

DON JUDGE, proponent. The AFL-CIO in general supports this bill. It is not perfect legislation, we understand that, but it is intended to compromise the issues that are important to workers. There is one section that we do have some trouble with, that section is current law. This bill would have amended that section, it is returning to current law that we have some difficulties with.

Amendment number 3, proposing to amend page 8, lines 9-23, striking the amendments that were made in subsection 6, I would like to point out that our difficulty is not so much in the language of the law but in the interpretation of the division in that law. It was always our understanding that when an individual was injured they would be off work for six work days, for most people that would mean 48 hours lost pay before they are entitled to draw the benefits under that provision. Unfortunately, we have situations in Montana where workers are working three 12-hour schedules. The way the division has interpreted this language those individuals will be off for a total of 72 hours lost wages before they are entitled to draw benefits. If you have an individual working four 10-hour days they would lose a total of 60 hours wages before they would be entitled to those benefits. If there is some way that the committee could clarify that language we would appreciate it.

NORM GROSFIELD, proponent. I am an attorney in Helena, Montana and my practice involves both claimants and defense work. I was involved in the group that came to the agreements on this bill and I support the bill as amended.

No Opponents.

Questions From Committee Members:

DRISCOLL: For Bill Palmer. On present law Section 39-71-736 which is section 6 of the bill, did you adopt rules for that section, do you know?

PALMER: No.

DRISCOLL: I know what the division does, they say six days lost wages. Now a person who is working four 10's or three 12-hour shifts, will lose three weeks of wages if they are hurt on the last day of their work week.. Before, if they were working three 12's they would be into the third week before they would receive any benefits. A person working four 10's would be into the third day of the third week before they would receive benefits. In the study committee that put SB 315 in it was not the intent that people would lose three weeks of wages before they would start to receive compensation. Without adopting rules, how did you interpret that to mean that it wasn't loss of 40 hours of work?

PALMER: I think that the interpretation hinges on the word days -- days of lost wages. We are not talking about so many hours per day whether they work 12 or 14 or 10, we are talking about a day of lost wages. If the earnings that day represent 12 hours, then it is one day's wages. We did not acquaint that to particular hours in a work day, nor to eight hours, so we are making a very literal interpretation of the word days.

DRISCOLL: On page 21 of the bill, new section C, lines 15-20, if a person has two jobs you would take the aggregate. If a person was self employed and had elected coverage you couldn't use the aggregate of those hours, as stated in line 18, page 21, "except self employment as a sole proprietor or partner, from which the employee is disabled by the injury." I guess I could see it if they elected not to have coverage, but if that person elected coverage under the act why couldn't they have aggregate earnings -- they have paid the premium.

PALMER: My guess is that they would. (here he read over the same section that Rep. Driscoll was referring to and then asked for some help interpreting it).

JIM MURPHY: The language is in line with the court decision. When the court decisions talk about aggregating wages, the one thing that the court decisions have left out is any wages earned through a sole proprietor operation, so we just took the same type of aggregation that appears in court decisions, and left out self employment. That is why it is there.

DRISCOLL: Did the court decision determine whether or not the person had elected coverage and if they had elected coverage under the act and paid the premium, why should they be penalized by not being able to aggregate the hours?

MURPHY: I think that is an amendment you can certainly put in. I'm just saying that's the reason it is there, because of the court decisions. I can't tell you for sure that they were elected coverage or not. When they tell you to aggregate wages they just exclude any earnings an individual might have gotten from a sole proprietorship operation.

SIMPKINS: For Mr. Palmer. Going back on section 1, we're talking about a penalty for a person if he doesn't notify you twenty days in advance. I have a problem with one constituent and this makes it sort of interesting to me because a self-employed person is not required to be covered under the program, but if he elects to be covered and then decides not to pay his premiums, there are two things that happen here -- please correct me if I am wrong -- (1) he has got to give you 20 days notice or you are going to penalize him because he just dropped his plan, and (2) for some reason he has to prove to you that he has another type of coverage, which he never had to have in the first place.

PALMER: I think you maybe misunderstood this section. This particular penalty is against the insurance company for not notifying the division that they have changed coverage on a particular employer. The division monitors the three plans -- self insurers, private carriers and an insured's companies. Insurance companies have to file a document with us which tells us what employers they have covered. What we are finding is that an insurance company on occasion will neglect to do that, when we get a medical bill or something and we can't find coverage, where that bill

has to go, or where to send a particular claim because that insurer has not given us that information. This is a way to encourage them to give us that information so we can direct that paper flow that comes in.

Closing by Sponsor:

SMITH: I did get a copy of the fiscal note for $14,700. What it is for is the cost of computer programing and I will urge a yes vote on this bill.

RUSSELL: This concludes the hearing on HB 347.

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HEARING ON HB 348

Presentation and Opening Statement by Sponsor:

REP. MARKS: This is a bill by the request of workers' comp division. I have handed to the committee members some proposed amendments that have been worked out by the respective parties. I presume that there is support for the bill as amended and I will speak to the bill as if it were amended. (Proposed amendments attached hereto as Exhibit #5).

This is a bill that clarifies the appointment of appeals panels to determine qualifications under the Occupational Disease Act. It clarifies how the panel of physicians is used when the insurer denies liability for an occupational disease. The division orders the examination to be made by the physician to determine if the disease exists and, if so, what percentage of it is attributed to the work place. In 1987 work comp amendments brought the definition of occupational disease to include new specialties not previously used. The old panels are no longer as appropriate as the new one that has been put together in this bill. It also clarifies how the panels are organized and includes some other housekeeping language to bring the panel process up to date.

One of the new sections that is not in the bill but is in the amendments is where it allows a statute to become retroactively effective so that those claims that have been filed previous to the enactment of this act will be able to have the panel operate just as if it had been in place before that.

GEORGE WOOD, proponent. I support this legislation as amended. I request that you report a do pass.

Questions from Committee Members:

None.

Closing by Sponsor:

REP. MARKS: I want to point out one of the changes in the amendments that is of some significance. I think it expresses the compromise best. I draw your attention to section 4 mainly on page 4 and the additional language that appears in the white bill which would indicate they want to add medical benefits.

RUSSELL: This closes the hearing on HB 348.

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DISPOSITION OF HB 348

Motion: Rep. Pavlovich, moved that HB 348 DO PASS.

Discussion: None.

Amendments and Votes: Rep. Pavlovich, moved that the amendments to HB 348 DO PASS.

Recommendation and Vote: Vote taken and unanimous decision for DO PASS as amended.

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DISPOSITION OF HB 347

Motion: Rep. Kilpatrick, moved that HB 347 DO PASS.

Discussion:

DRISCOLL: The intent of the bill last session was not loss of wages. During the 18 months I sat on that committee to study workers' comp, it was never intended for a person to lose three weeks of wages before they got compensation. The intent was 48 hours. The way the bill was written last time and the interpretation of the division, a person working three 12-hour shifts a week loses a lot more than 48 hours of wages before they get any compensation and it is getting very common in this state for people to work four 10's and those people lose a lot more than 48 hours wages before they

receive any compensation. I guess they had a meeting and they decided they would strike section 6 out of the bill and leave it as is so those people would still lose three weeks or two and a half weeks, but it isn't right.

In Section 12, Line 21, states that if a self-employed person who elects coverage and pays the compensation insurance, has a second job, and he gets hurt, he can't collect benefits. I don't know what the court said on those particular cases, but why would they say you paid the premium but you still can't collect benefits.

My guess is the person had elected not to have the coverage, therefore they could not put those hours in to figure aggregate. If they did pay the premium, they sure ought to be able to collect the benefits. I would rather that we hold this bill for awhile so I could check that case and see if that person paid the premium or not.

KILPATRICK: I withdraw my motion, I didn't realize that.

RUSSELL: The motion is withdrawn.

Does it appear on HB 347 it might be helpful to set up a subcommittee on it so we can get it moving?

SIMPKINS: Maybe we should act on this right now because we have a group of people here who have agreed in total on the amendments and this bill as such. If we make modifications we will be out of the agreement. It doesn't seem like it would be too much to make a modification and I agree with Rep. Driscoll that no person should be extended six days if they have put in their 48 hours. It seems like if we dink around with this bill too much we are out of that agreement.

SMITH: This is true, however I just happen to agree with Jerry on this issue. This was a package that was agreed to on by all parties and I pretty well have to stay with it.

GLASER: Jerry, if this bill would go out of here like it is now and the minutes of the subcommittee of two years ago showed that the 48 hours were as you described, then I would support an amendment on the floor.

RUSSELL: Members of the committee, it appears as though we really do have to do some cleanup work on some of your concerns here so I am going to go ahead and put it into a subcommittee. I would like the following three

representatives to work on the concerns that you have expressed right now and bring it back to us on Thursday so we can act on it. I recommend Rep. Driscoll, Rep. Kilpatrick and Rep. Glaser. Would you be able to get your concerns ironed out and brought back to committee on Thursday?

DRISCOLL: Yes.

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DISPOSITION OF HB 323

Holding on this bill for more information.

- - - - - - - - -

DISPOSITION OF HB 156

Motion:

O'KEEFE: I move DO NOT PASS.

Discussion:

SIMPKINS: There is one thing that I noticed in the other Montana codes and I was just wondering whether the committee could either modify this to an extent or possibly come up with a committee bill changing the section that says "ten years experience" and drop it to five years experience to give the department a little bit more leniency in hiring people. to eliminate that.

O'KEEFE: I think in the stricken language in Section 2, subsection 2, page 2, currently it is five years.

SIMPKINS: That's the coal miners, not the boilers.

O'KEEFE: I guess from what the testimony was from the department, the boiler inspectors weren't the people having the problem, it was the coal inspectors. I would think that we would leave that.

RUSSELL: Is there further discussion on the DO NOT PASS motion?

Recommendation and Vote: The question resulted in dissention on the vote. A roll call vote was called on the DO NOT PASS motion on HB 156: Results were 10 yes votes, 6 no votes. See attached roll call vote sheet.

The DO NOT PASS motion passed 10 to 6.

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 1-31-89

	PRESENT	ABSENT	EXCUSED
Angela Russell, Chairman	✓		
Lloyd "Mac" McCormick,VC	✓		
Vicki Cocchiarella	✓		
Duane Compton	✓		
Jerry Driscoll	✓		
Bob Pavlovich	✓		
Bill Glaser	✓		
Tom Kilpatrick	✓		
Thomas Lee	✓		
Mark O'Keefe	✓		
Jim Rice	✓		
Richard Simpkins	✓		
Clyde Smith	✓		
Carolyn Squires	✓		
Fred Thomas	✓		
Timothy Whalen	✓		

EXHIBIT #3
DATE 1-31-89
HB 347

PROPOSED AMENDMENT TO HOUSE BILL NO. 347

1 of 2

1. Page 6, line 14.

Following: "treatment of an injury"

Insert: "pursuant to rules adopted by the division.

2. Page 8, line 6.

Following: "and the division."

Insert: "For injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial.

3. Page 8, lines 9-23.

Strike: [Section 6].

4. Page 21, line 9.

Following: "average actual"

Strike: "earnings"

Insert: "wages"

5. Page 21, line 12.

Following: "average actual"

Strike: "earnings"

Insert: "wages"

6. Page 21, line 17.

Following: "average actual"

Strike: "earnings"

Insert: "wages"

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EXHIBIT
DATE 1-31-89
HB 347

2 of 2

7. Page 22, line 25.

Following: "the claimant is"

Strike: "entitled to"

Insert: "claiming"

8. Page 24, lines 2-21.

Strike: [Section 15].

9. Page 24, line 22, to page 25, line 17.

Strike: [Section 16].

10. Page 25, line 23.

Following: "Sections 13"

Strike: "and 15 through"

Insert: " , 17 and"

11. Page 25, line 24.

Following: "passage and approval"

Insert: "All other sections of this act are effective July 1, 1989."

12. Page 26, lines 3-6.

Strike: [Subsection (2)(b)].

H347amdt

EXHIBIT #4
DATE 1-31-89
HB 347

pg 1 of 7

DIVISION TESTIMONY

HB 347

Generally Revise Workers' Compensation Laws

Section 1

Notice of Cancellation Penalty

Existing statutes require insurers to notify the Division 20 days prior to the date they intend to cancel a workers' compensation insurance policy. This allows the Division's records to accurately reflect the insurer responsible for the payment of claims when submitted to the Division. The current law provides no penalty if the insurer fails to notify the Division of the cancellation. The proposed legislation allows the Division to assess a penalty of no more than $200, and the insurer has the right to contest the assessment of such a penalty.

Section 2

Job Pool and Rehabilitation

The current definition of job pool as adopted in the 1987 Reform is not as clear as it could be and, in some cases, is not applicable. The proposed legislation is merely a change in the definition in order to make the system more workable. It also clarifies when total rehabilitation benefits begin.

Section 3

Total Rehabilitation Benefits

Temporary Total Disability benefits terminate on the date maximum medical improvement (MMI) is reached, but current law (39-71-1023) does not allow Total Rehabilitation benefits to begin until both MMI and designation of a rehabilitation provider occurs, thus leaving a possible gap. The insurer is supposed to designate a rehabilitation panel as soon as the disabled worker reaches MMI, but if a delay occurs, the worker could technically be without benefits for a period of time.

The amendment automatically begins Total Rehabilitation benefits at MMI whether or not a rehabilitation provider has been designated. The 26-week rehabilitation period does not begin until the Division is notified a provider has been designated.)

Section 4

Travel Expenses for Medical Care

Insurers have normally paid travel expenses incurred by the claimant for travel to obtain medical care. The statutes have never expressed the amount which should be paid for reasonable travel expenses. The proposed legislation sets the amount at the same rates which would be allowed for reimbursement of travel by state employees.

EXHIBIT 4
DATE 1-31-89
HB 347
3 of 7

Section 5

No Notice for Benefits Reduction

The present statutes, which require insurers to provide a 14-day notice upon termination of benefits, somewhat conflict with the new reform legislation in that under the new legislation, the insurer may continue to pay biweekly benefits, but the type of benefit category changes. For example, a claimant, under the new law, can be switched from Temporary Total benefits to Total Rehabilitation benefits, and the rate of pay is exactly the same. Technically, such a change would require a 14-day notice under the existing statutes. The purpose of the proposed legislation is to clarify the point that the insurer only provide(s) the 14-day notice when all biweekly benefits are terminated. The law allows the right of appeal in other situations where the biweekly benefits of the injured worker are changed from one category to another.

Section 6

Amendment to Delete

DATE 1-31-89
HB 347
4 of 7

Section 7, 8, and 9

Payroll Definition

The terms wages and payroll are used in workers' compensation to both determine the amount of premium paid and to determine the amount of compensation paid in the case of a claim. The definitions in the Act of these two terms do not necessarily coincide; and therefore, the purpose of the legislation is to make sure the definition of wages and payroll are uniform.

Section 10

Limit Premium Collection

The purpose of this amendment is to place reasonable time frames on the number of years the Division can go back and assess premium or issue refunds through audit or other types of adjustments. The selection of three years is in accordance with what Unemployment Insurance is allowed to do, and at least partially eliminates a burden on the employer in the case of a premium charge and on the State Compensation Insurance Fund in the case of premium refund.

EXHIBIT 4
DATE 1-31-89
HB 347
5057

Section 11

Partners/Proprietors' Coverage

Under the Workers' Compensation Act, sole proprietors and working partners may elect to provide coverage for themselves, and the purpose of the proposed legislation is to clarify the wage base to be used if a covered sole proprietor or working partner is injured on the job. The wage base to be used will be consistent with the wage base identified by the sole proprietor or partner at the time the election for coverage is made.

Section 12

Wages for Concurrent Employment

The purpose of this section is to clarify when wages from two different employments should be aggregated in order to calculate the claimant's compensation rate. This is, in part, a codification of case law. It should be noted that for Temporary Total the State Compensation Insurance Fund does aggregate wages.

Section 13

Release of Information

The Health Care Information Act enacted by the 1987 Legislature restricts the dissemination of health care information by health care providers. This restriction could require insurers to obtain written releases for health care information every 30 months--even though the injured worker signes a claim form which serves as a medical release so the treating physicians can provide information to the insurer. The medical information is obviously necessary in order to determine the compensation benefits due an injured worker. The proposed legislation in effect exempts the workers' compensation insurer from these restrictions as long as the insurer has a signed claim form.

Section 14

Failure to Submit Records Penalty

The present law requires insurers and adjusters to submit reports and information to the Insurance Compliance Bureau in order for them to effectively monitor claims. The proposed legislation subjects insurers and adjusters to a penalty of not less than $200 and not more than $500 for failing to submit the information required.

EXHIBIT 4
DATE 1-31-89
HB 347
7 of 7

Section 15 and 16

Amendment to Delete

Section 17

Extension of Rule Authority

Section 18

Effective Dates -- (7/1/89 Most Sections)

William R. Palmer

Interim Administrator

1/31/89

VISITORS' REGISTER

HOUSE LABOR AND EMPLOYEE RELATIONS COMMITTEE

BILL NO. 347 DATE January 31, 1989

SPONSOR SMITH

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Bill Palmer	DYC	✓	
[illegible]	✓	✓	
[illegible]	✓	✓	
George Wood	Mt. Self Insurers Assn	as amended	
Lori Cooper	Stone Container	as amended	
Mike Sherwood	MTLA	as amended	
Archie Lake	Self		
Norm Anderson	Attorney - Helena	as amended	
Robert Kampfer	" "	"	
Don Judge	MT STATE AFL-CIO	as amended	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Chairman Russell, on February 2, 1989, at 3:20 P.M.

ROLL CALL

Members Present: All except as listed below.

Members Excused: Mark O'Keefe.

Members Absent: Bill Glaser.

Staff Present: Eddye McClure, Staff Attorney

Announcements/Discussion: Rep. O'Keefe is part of an emergency rescue team and he needed to be excused to tend to his duties there.

We have two bills to hear today. We will begin with Rep. Davis's bill first, HB 427.

HEARING ON HB 427

Presentation and Opening Statement by Sponsor:

ERVIN DAVIS: HB 427 is a bill proposed by the Board of Education for an act to exempt certain personnel at the Montana School for the Deaf and Blind from the law relating to leave time for state employees, amending Section 2-18-601, MCA, and providing an effective date.

Just before I walked in I received a notice of fiscal note for my signature before printing. I'll see that you get it, but those employees are gone and I can't get it today, but it will be mentioned in the testimony.

I would like to defer most or all questions to the proponents of the bill and then close later. (Written testimony submitted, attached hereto as Exhibit #1).

Testifying Proponents and Who They Represent:

CLAUDETTE MORTON, Executive Secretary to the Board of Public Education.

FLOYD McDOWELL, Coalition for the Deaf and Hearing Impaired.

In view of the apparent need to clarify some of these things, I withdraw my motion.

RUSSELL: The motion has been withdrawn and we are back to square one.

Vote:

Vote taken and committee voted unanimously to POSTPONE CONSIDERATION of this bill until further notice.

RUSSELL: Rep. Thomas, you have some amendments you are going to work out with Eddye McClure?

THOMAS: Yes.

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DISPOSITION OF HB 347

Subcommittee Report: Handed out proposed amendments to members.

DRISCOLL: Page 8, lines 11 and 12, section 6 of the bill, clarifies what the intent of last session's law was. If a person gets hurt they do not start claiming benefits until they have lost 48 hours or six days, whichever is first. those people working those funny shifts, four 10's, or in the case of the warehouse at Colstrip they work three 12's, as soon as they lost 48 hours they would start receiving benefits, or in the case where a person was only working five hours a day, as soon as they lost six working days. I think that clarifies a lot of the intent. That's the first one.

The other one that is on the back, page 21, the self-employed people. The new language talks about calculating benefits if you hold more than one job and you get hurt on one of those jobs. The problem I had, as it was originally drafted, is that on lines 13 and 18 of page 21, it says if you are self-employed, a sole proprietor or partner, we would insert the words "... who have elected not to be covered," so that if the person paid the premium, elected coverage and they were hurt they could collect. Basically that's all the amendments do.

Eddye McClure will explain the rest of the amendments.

McCLURE: The change in the title is from the added language in section 5, that an employer did not have to notify to terminate all benefits. If you look at the title it says "clarifying that an insurer is not required to give notice prior to reducing biweekly benefits." We put some new language in saying "for injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial." The fact that he is not required to give notice is misleading in the title, so we took that word out.

The rest of the parts of the title are just changes we made for internal structure

On page 6, line 14, we added at the end of "injury," "pursuant to rules adopted by the division." The rest of the amendments were added in from amendments we had, or were give to us.

SIMPKINS: Eddye, on your point #6 .... (did not have his microphone on and could not be understood)

McCLURE: "Whichever is less" is the language Rep. Driscoll requested, but "less than 48" or "six," "whichever occurs first, 48 hours or six days," is that the intent of Rep. Driscoll?

DRISCOLL: Yes.

SIMPKINS: Page 8, lines 11 and 12.

RUSSELL: Rep. Simpkins, you are wanting to change that language to "whichever occurs first," is that right?

(Several people discussing this all at the same time and not using microphones and none of it is distinguishable)

McCLURE: No, just six days' loss of wages.

(Again, several people talking all at once, no microphones, couldn't understand anything)

DRISCOLL: ... If you're talking 8 hour days you're right, if you are talking 10 or 12 hour days, that is not the same because the way the law is now it is "six days loss of wages." (Here he went on to explain about the shifts at the Colstrip warehouse).

If everyone worked 40 hours, Monday through Friday, all the time, six lost days would work, but because a lot of people now are working three 12-hour days for straight time, four 10's for straight time, you need to have a way to say either six days of lost wages for those people who don't work eight hours a day, or 48 hours for those who work more than eight hours a day.

(Simpkins and others discussing this, no microphones on and nothing was distinguishable)

DRISCOLL: I move the bill DO PASS.

I move the amendments DO PASS.

RUSSELL: Is there any further discussion? We have a motion on a DO PASS with amendments as provided.

Vote: Unanimous vote to DO PASS.

McCLURE: Are those the acceptance of both amendments that were welded together, the division's?

Answered "yes"

RUSSELL: Point of clarification. We voted on that bill as amended. Now, is there a problem with that, do we need to separate that out?

WHALEN: Any time there is a vote on the amendments, then you have to vote again on the bill as amended.

THOMAS: You don't need a motion to do what Tim is saying, I think you just declare that we need to revert back to the motion to amend the bill, do that, and then act on the motion to DO PASS.

RUSSELL: So at this point we revert back to the motion to amend.

Vote: Unanimous vote to DO PASS AMENDMENTS.

DRISCOLL: I move DO PASS as amended.

Vote: Unanimous vote to DO PASS HB 347 AS AMENDED.

- - - - - - - -

HB 157

RUSSELL: We have one more bill left that we haven't taken action on and that is HB 157. Is this a bill we want to take care of today or do we want to hold that until Tuesday.

PAVLOVICH: I think we should wait until next Tuesday and it will give us a chance to look at all these amendments on HB 157. (Copy of proposed amendments attached hereto as Exhibit #2).

- - - - - - - -

ADJOURNMENT

Adjournment At: 4:35 P.M.

Angela Russell

REP. ANGELA RUSSELL, Chairman

AR/mo

2809.MIN

411

DAILY ROLL CALL

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 2-2-89

NAME	PRESENT	ABSENT	EXCUSED
Rep. Angela Russell, Chairman	✓		
Rep. Lloyd "Mac" McCormick,VC	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Duane Compton	✓		
Rep. Jerry Driscoll	✓		
Rep. Bob Pavlovich	✓		
Rep. Bill Glaser		✓	
Rep. Tom Kilpatrick	✓		
Rep. Thomas Lee	✓		
Rep. Mark O'Keefe			✓
Rep. Jim Rice	✓		
Rep. Richard Simpkins	✓		
Rep. Clyde Smith	✓		
Rep. Carolyn Squires	✓		
Rep. Fred Thomas	✓		
Rep. Timothy Whalen	✓		

CS-30

12:45 pm
2/03/89
ja

Insert: "days'loss of wages, whichever is less, that"

7. Page 21, line 9.
Following: "actual"
Strike: "earnings"
Insert: "wages"

8. Page 21, line 12.
Following: "actual"
Strike: "earnings"
Insert: "wages"

9. Page 21, line 14.
Following: "partner"
Insert: "who elected not to be covered"

10. Page 21, line 17.
Following: "actual"
Strike: "earnings"
Insert: "wages"

11. Page 21, line 19.
Following: "partner"
Insert: "who elected not to be covered"

12. Page 22, line 25.
Following: "is"
Strike: "entitled to"
Insert: "claiming"

13. Page 24, line 2 through page 25, line 17.
Strike: sections 15 and 16 in their entirety
Renumber: subsequent sections

14. Page 25, line 23.
Following: "[Sections 13"
Strike: "and 15 through"
Insert: ", 17, and"

15. Page 25, line 25.

4

2/03/89
ja

STANDING COMMITTEE REPORT

February 3, 1989

Mr. Speaker: We, the committee on Labor report that House Bill 347 (first reading copy -- white) do pass as amended .

Signed: _____
Angela Russell, Chairman

And, that such amendments read:

1. Title, line 12.
Following: "IS"
Strike: "NOT"

2. Title, page 2, line 1.
Following: "39-71-2304,"
Strike: "39-71-2901, 39-71-2903,"

3. Page 6, line 14.
Following: "injury"
Insert: "pursuant to rules adopted by the division"

4. Page 7, line 24.
Following: "benefits"
Insert: "or reduction to partial benefits"

5. Page 8, line 6.
Following: "division."
Insert: "For injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial."

6. Page 8, lines 11 and 12.
Following: "first"
Insert: "48 hours or"
Following: "~~wages~~"
Strike: "consecutive days"

44

Following: "approval." on line 24
Insert: "(2) All other sections of [this act] are effective July 1, 1989."

16. Page 25, line 25.
Following: line 24
Strike: "(2)(a)"
Insert: "(3)"

17. Page 26, lines 3 through 6.
Following: line 2
Strike: subsection (b) in its entirety

STATU SHEET

LABOR COMMITTEE
51st LEGISLATIVE SESSION

BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CONCURR-IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRI IN AMMEI ED DATE
HB21	1-26-48	2-2-2-4	2-4					2-4			
HB99	1-27-89	2-2, 2-4	2-4							2-4	
HB28	1-31-89	3-21, 3-22	3-22							3-22	
HB154	2-6-89	2-28, 2-28	2-28							2-28	
HB155	2-6-89	2-28, 2-28	2-28							2-28	
HB348	2-7-89	3-2, 3-2	3-2					3-2			
HB243	2-8-89	2-28, 3-2	3-2							3-2	
HB391	2-9-89	3-2, 3-2	3-2					3-2			
HB347	2-10-89	3-2, 3-2 3-7	3-7 Reconsidered 3-2					3-2		Reconsidered 3-7	
HB-377	2-28-89	3-7, 3-7 3-9	3-9					3-9			
HB529	2-28-89	3-14, 3-21 3-22	3-22								
HB541	2-28-89	3-7, 3-7 3-9	3-9					3-9			
HB508	2-28-89	3-9, 3-16	3-16								3-16
HB639	2-28-89	3-14, 3-16	3-16						3-16		
HB677	2-28-89	3-14, 3-16	3-16					3-16			
HB700	2-28-89	3-16, 3-21	3-21							3-21	
HB710	2-28-89	3-14, 321	3-21							3-21	
HB249	2-28-89	39, 3-9	3-9					3-9			

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Senator Gary C. Aklestad, on March 2, 1989, at 1:00 P.M. in room 415 of the state Capitol.

ROLL CALL

Members Present: Ten members of the committee were present. Senator Tom Keating, Vice-Chairman, Senator Sam Hofman, Senator J.D. Lynch, Senator Gerry Devlin, Senator Dennis Nathe, Senator Richard Manning, Senator Chet Blaylock, and Senator Gary Aklestad, Chairman.

Members Excused: Senator Pipinich was excused.

Members Absent: There were no members absent.

Staff Present: Tom Gomez, Legislative Council Analyst.

Announcements/Discussion: There were no announcements or discussion.

HEARING ON HOUSE BILL 347

Presentation and Opening Statement by Sponsor:

Representative Clyde Smith, Kalispell, MT, House District No. 5, stated HB 347 generally revises various sections of the laws relating to Workers' Compensation. HB 347 sections include housekeeping items, language clarification, and changes which will allow the system to work more effectively. None of the sections seriously impact the coverage or benefit sections of current law. The division, cooperating with other people working in the Workers' Compensation System, agreed to several amendments presented at the labor committee hearing. These amendments are included in the amended bill. SB 347 addresses a number of items: 1) It enables the division to request records from insurers to accurately reflect names and periods covered. A fine is established for possible non-reporting; 2) It changes the definition of job pool in order to make it more workable; 3) It verifies when total rehabilitation benefits

begin after an individual has reached maximum medical improvement; 4) It establishes a basis upon which insurers reimburse injured workers for travel expenses; 5) It clarifies when a 14-day notice of benefit termination should be issued; 6) It allows the 6-day wage loss waiting period to mean either six day of wage loss or 48 hours--whichever is less; 7) It defines the term "wages" and "payroll" as the same thing for both premium and wage compensation purposes; 8) It limits State Fund Audit Assessments and Refunds to 3 years; 9) It requires partners and sole proprietors to declare the premium wage base, which becomes the wage base for benefit purposes; 10) It codifies case law to include the wage base calculation earnings from concurrent employment; 11) It allows a workers' compensation insurer to receive information from a medical provider for an indefinite period, as long as the injured worker has signed a claim for benefits; and 12) It gives the division enforcement authority by providing a penalty on insurers who do not submit required information. The Fiscal impact of $14,700 primarily allows the division to prepare and disseminate information to affected parties about changes in this bill. These are one-time costs. HB 347 DOES: a) Clarify some ambiguities in the current act; b) Responds to court decisions; and c) Establishes Legislative Intent. HB 347 DOES NOT: a) Change the current benefit structure, or, b) Change the current rate making system.

List of Testifying Proponents and What Group they Represent:

Bill Palmer, Interim Administrator, representing the Workers' Compensation Division.

George Wood, Executive Secretary, representing the Montana Self Insurer Association.

Michael Sherwood, representing the Montana Trial Lawyers Association.

James Tutwiler, representing the Montana Chamber of Commerce.

Testimony:

Bill Palmer, Interim Administrator of the Workers' Compensation Division stated HB 347 enables the Division to request records from insurers. The records reflect the individual's coverage and gives information concerning the time period. HB 347 includes a fine of not more than $200 for failure to report accurate information. The Job Pool is defined to make HB 347 more workable. Section 3 verifies when total rehabilitation begins, and when an individual has reached maximum healing/maximum medical improvement. HB 347

establishes a basis to reimburse injured workers for travel expense. The amount is the same amount State employees receive for milage and meal allowance. A 14-day benefit termination notice is defined. Currently, notices must be sent to clients when benefits are cut off or start. HB 237 states insurers will not be required to give written notice. The wage loss waiting period adds a 48 hour wage loss waiting period to the current 6 days of loss, whichever is less. The terms, wages and payroll, are the same for premium and benefit purposes. Currently, wages and payroll are interpreted differently. HB 337 clarifies the limitation. State fund audit assessments and refunds are limited to three years. Partners and sole proprietors will declare the premium wage base, which will become the wage base for benefit purposes. If an individual is hurt at one of his/her three jobs, the benefits will be based on all the jobs combined because it is part of the earning base. The insurer has the right to receive medical information continuously, without a 30 month delay. The private carriers and self insurers are required to submit information to the insurance compliance bureau. Sections 15, extension of authority, and 16, effective dates, are replaced. Mr. Palmer submitted written testimony. (Exhibit 1)

George Wood, Executive Secretary of the Montana Self Insurer Association, stated HB 347 was submitted to employers and trial attorneys for discussion. HB 347 incorporates points of mutual agreement. Therefore, the Association urges passage of the legislation.

Michael Sherwood, Montana Trial Lawyers Association, stated support for HB 347.

James Tutwiler, Montana Chamber of Commerce, stated HB 347, in aggregate, will mean the significant upgrading of the administrative procedure. Tutwiler urged support for HB 347.

List of Testifying Opponents and What Group They Represent:

John Anderson, Helena, Montana, representing himself.

Testimony:

John Anderson, Helena, Montana, stated he had wrist surgery in 1987. After the injury the mill, where he was employed, tightened the green chain in order to increase speed by twenty-five percent. Mr. Anderson stated he has a copy of the neurological report. The report states the green chain pulling activity should be done by machine rather then by human. Most humans can't stand the tension. The company maintains the mill is a safe place to work, but it is not.

Currently, the mill is paying a bonus if workers can work faster. The process speeds up the machinery which will casue, which means there will be more accidents.

There were no further opponents.

Questions From Committee Members:

Senator Blaylock asked Mr. Anderson if he wants the mill to be made safer. Mr. Anderson stated, for starters that would help solve the problem... Senator Blaylock stated it is the old language the Workers' Compensation is using. On page 3, line twenty-two, under rehabilitation,The language states there is no retraining fund. I was a good worker, there is no place to turn.

Senator Aklestad asked about the amount specified in the fiscal note. Representative Smith replied the money was for the computer. The $14,700 impact of the fiscal note is for notifications, coordination, administration. The reimbursement of travel costs would be for claimants so there would be a standard set to apply to the private carrier, the state fund, or self insurers. The fiscal note is strictly a State Fund operating cost for notification issue. Senator Aklestad stated the department will establish one travel standard figure. Yes, the standard would be the amount given to state employees for travel reimbursement. $24 per day for room, and $14.50 for meals, and $.21 for milage.

Closing by Sponsor:

Representative Clyde Smith expressed concern over Mr. Anderson's plight, noting HB 347 does not effect the situation in any way. Representative Smith urged passage of HB 347.

HEARING ON HOUSE BILL 348

Presentation and Opening Statement by Sponsor:

Representative Marks, House District 75, stated HB 348 is a housekeeping bill that develops a new method of selecting a list of positions to serve on the occupation and disease panel, and provides the retroactive payment. HB 348 is an act to generally revise the laws relating to occupational disease to clarify the medical panel examination and hearing processes; and amending sections 39-72-601, 39-72-612, and 39-72-706, MCA; and providing an effective date and some retroactive application.

List of Testifying Proponents and What Group they Represent:

Recommendation and Vote:

Senator Keating made a motion to consider HB 243 BE CONCURRED IN AS AMENDED, with a Statement of Intent. The motion passed unanimously. Senator Keating will carry the bill.

Senator Blaylock will carry HB 391.
Senator Nathe will carry HB 348.
Senator Manning will carry HB 154.

DISPOSITION OF HOUSE BILL 348

Recommendation and Vote:

Senator Nathe moved that HB 348 BE CONCURRED IN, with no amendments. The motion passed.

DISPOSITION OF HOUSE BILL 347

Discussion:

Senator Aklestad said HB 347 is bound to increase the cost of some insurers, if the insurers are not up to the established rate. Senator Aklestad asked if the increase topic has been discussed. Jim Murphy stated the travel expenses deals with a $70,000 claim. It is easier to have a standard rate set.

Recommendation and vote:

Senator Blaylock made a motion BE CONCURRED IN. The motion passed unanimously. Senator Manning will carry the bill.

ADJOURNMENT

Adjournment At: The meeting was adjourned at 2:39 P.M.

Senator Gary C. Aklestad, Chairman

GCA/mfe

Minutes.302

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: March 2, 1989

	PRESENT	ABSENT	EXCUSED
SENATOR TOM KEATING	X		
SENATOR SAM HOFMAN	X		
SENATOR J.D. LYNCH	X		
SENATOR GERRY DEVLIN	X		
SENATOR BOB PIPINICH			X
SENATOR DENNIS NATHE	X		
SENATOR RICHARD MANNING	X		
SENATOR CHET BLAYLOCK	X		
SENATOR GARY AKLESTAD	X		

DIVISION TESTIMONY

HB 347

Generally Revise Workers' Compensation Laws

Section 1

Notice of Cancellation Penalty

Existing statutes require insurers to notify the Division 20 days prior to the date they intend to cancel a workers' compensation insurance policy. This allows the Division's records to accurately reflect the insurer responsible for the payment of claims when submitted to the Division. The current law provides no penalty if the insurer fails to notify the Division of the cancellation. The proposed legislation allows the Division to assess a penalty of no more than $200, and the insurer has the right to contest the assessment of such a penalty.

Section 2

Job Pool and Rehabilitation

The current definition of job pool as adopted in the 1987 Reform is not as clear as it could be and, in some cases, is not applicable. The proposed legislation is merely a change in the definition in order to make the system more workable. It also clarifies when total rehabilitation benefits begin.

Total Rehabilitation Benefits

Temporary Total Disability benefits terminate on the date maximum medical improvement (MMI) is reached, but current law (39-71-1023) does not allow Total Rehabilitation benefits to begin until both MMI and designation of a rehabilitation provider occurs, thus leaving a possible gap. The insurer is supposed to designate a rehabilitation panel as soon as the disabled worker reaches MMI, but if a delay occurs, the worker could technically be without benefits for a period of time.

The amendment automatically begins Total Rehabilitation benefits at MMI whether or not a rehabilitation provider has been designated. The 26-week rehabilitation period does not begin until the Division is notified a provider has been designated.)

Section 4

Travel Expenses for Medical Care

Insurers have normally paid travel expenses incurred by the claimant for travel to obtain medical care. The statutes have never expressed the amount which should be paid for reasonable travel expenses. The proposed legislation sets the amount at the same rates which would be allowed for reimbursement of travel by state employees.

Section 5

No Notice for Benefits Reduction

The present statutes, which require insurers to provide a 14-day notice upon termination of benefits, somewhat conflict with the new reform legislation in that under the new legislation, the insurer may continue to pay biweekly benefits, but the type of benefit category changes. For example, a claimant, under the new law, can be switched from Temporary Total benefits to Total Rehabilitation benefits, and the rate of pay is exactly the same. Technically, such a change would require a 14-day notice under the existing statutes. The purpose of the proposed legislation is to clarify the point that the insurer only provide(s) the 14-day notice when all biweekly benefits are terminated. The law allows the right of appeal in other situations where the biweekly benefits of the injured worker are changed from one category to another.

Section 6

~~Amendment to Delete~~

Adds a 48 hour wage loss waiting period to the current 6 days of loss whichever is less. Allows for circumstances where a person works other than a five 8-hour days. Allows workers to qualify for benefits sooner if they work longer hours in a given day. eg. 4-10hr days

5

Section 7, 8, and 9

Payroll Definition

The terms wages and payroll are used in workers' compensation to both determine the amount of premium paid and to determine the amount of compensation paid in the case of a claim. The definitions in the Act of these two terms do not necessarily coincide; and therefore, the purpose of the legislation is to make sure the definition of wages and payroll are uniform.

Section 10

Limit Premium Collection

The purpose of this amendment is to place reasonable time frames on the number of years the Division can go back and assess premium or issue refunds through audit or other types of adjustments. The selection of three years is in accordance with what Unemployment Insurance is allowed to do, and at least partially eliminates a burden on the employer in the case of a premium charge and on the State Compensation Insurance Fund in the case of premium refund.

Section 11

Partners/Proprietors' Coverage

Under the Workers' Compensation Act, sole proprietors and working partners may elect to provide coverage for themselves, and the purpose of the proposed legislation is to clarify the wage base to be used if a covered sole proprietor or working partner is injured on the job. The wage base to be used will be consistent with the wage base identified by the sole proprietor or partner at the time the election for coverage is made.

Section 12

Wages for Concurrent Employment

The purpose of this section is to clarify when wages from two different employments should be aggregated in order to calculate the claimant's compensation rate. This is, in part, a codification of case law. It should be noted that for Temporary Total the State Compensation Insurance Fund does aggregate wages.

Release of Information

The Health Care Information Act enacted by the 1987 Legislature restricts the dissemination of health care information by health care providers. This restriction could require insurers to obtain written releases for health care information every 30 months--even though the injured worker signes a claim form which serves as a medical release so the treating physicians can provide information to the insurer. The medical information is obviously necessary in order to determine the compensation benefits due an injured worker. The proposed legislation in effect exempts the workers' compensation insurer from these restrictions as long as the insurer has a signed claim form.

Section 14

Failure to Submit Records Penalty

The present law requires insurers and adjusters to submit reports and information to the Insurance Compliance Bureau in order for them to effectively monitor claims. The proposed legislation subjects insurers and adjusters to a penalty of not less than $200 and not more than $500 for failing to submit the information required.

Section 15 and 16

Amendment to Delete

Section ~~FF~~ 15

Extension of Rule Authority

Section ~~FG~~ 16

Effective Dates -- (7/1/89 Most Sections)

William R. Palmer

Interim Administrator

3/2/89

1:00 P.M. H.B. 347 3-2-89
March 2 Pg. 1 of 3

Presentation

HOUSE BILL 347

Second Reading - Montana House of Representative
by
Representative Clyde Smith

HOUSE BILL 347 GENERALLY REVISES VARIOUS SECTIONS OF THE LAWS RELATING TO WORKERS' COMPENSATION. SOME OF ITS SECTIONS INCLUDE HOUSEKEEPING ITEMS, LANGUAGE CLARIFICATION, AND CHANGES WHICH WILL ALLOW THE SYSTEM TO WORK MORE EFFECTIVELY. NONE OF THE SECTIONS SERIOUSLY IMPACT THE COVERAGE OR BENEFIT SECTIONS OF CURRENT LAW. THE DIVISION, IN A SPIRIT OF COOPERATION WITH OTHER PARTIES IN THE WORKERS' COMPENSATION SYSTEM, AGREED TO SEVERAL AMENDMENTS WHICH WERE PRESENTED AT THE LABOR COMMITTEE HEARING. THESE AMENDMENTS ARE NOW INCLUDED IN THIS AMENDED BILL AS IS ANOTHER COMMITTEE AMENDMENT.

THE BILL YOU HAVE BEFORE YOU ADDRESSES A NUMBER OF ITEMS.

(1) IT ENABLES THE DIVISION TO REQUEST RECORDS FROM INSURERS WHICH ACCURATELY REFLECT WHO THEY COVER AND FOR WHAT PERIOD AND INCLUDES A

FINE FOR POSSIBLE NONREPORTING; (2) CHANGES THE DEFINITION OF JOB POOL IN ORDER TO MAKE IT MORE WORKABLE; (3) VERIFIES WHEN TOTAL REHABILITATION BENEFITS BEGIN AFTER AN INDIVIDUAL HAS REACHED MAXIMUM MEDICAL IMPROVEMENT; (4) ESTABLISHES A BASIS UPON WHICH INSURERS REIMBURSE INJURED WORKERS FOR TRAVEL EXPENSES; (5) CLARIFIES WHEN A 14-DAY NOTICE OF BENEFIT TERMINATION SHOULD BE ISSUED; (6) ALLOWS THE 6-DAY WAGE LOSS WAITING PERIOD TO MEAN EITHER SIX DAYS OF WAGE LOSS OR 48 HOURS--WHICHEVER IS LESS; (7) DEFINES THE TERM "WAGES" AND "PAYROLL" AS THE SAME THING FOR BOTH PREMIUM AND WAGE COMPENSATION PURPOSES; (8) LIMITS STATE FUND AUDIT ASSESSMENTS AND REFUNDS TO 3 YEARS; (9) REQUIRES PARTNERS AND SOLE PROPRIETORS TO DECLARE THE WAGE BASE FOR PREMIUM PURPOSES WHICH ALSO BECOMES THE WAGE BASE FOR BENEFIT PURPOSES; (10) CODIFIES CASE LAW TO INCLUDE IN THE WAGE BASE CALCULATION EARNINGS FROM CONCURRENT EMPLOYMENT; (11) ALLOWS A WORKERS' COMPENSATION INSURER TO RECEIVE INFORMATION FROM A MEDICAL PROVIDER FOR AN INDEFINITE PERIOD AS LONG AS THE INJURED WORKER HAS SIGNED A CLAIM FOR BENEFITS; AND (12) GIVES THE DIVISION ENFORCEMENT AUTHORITY BY PROVIDING A PENALTY ON INSURERS WHO DO NOT SUBMIT REQUIRED INFORMATION.

3-28-89

THE FISCAL IMPACT OF $14,700 ON THIS BILL PRIMARILY ALLOWS FOR THE DIVISION TO PREPARE AND DISSEMINATE INFORMATION TO AFFECTED PARTIES ABOUT THE CHANGES IN THIS BILL. THESE ARE ONE-TIME COSTS.

NOTE: THIS BILL DOES (A) CLARIFY SOME AMBIGUITIES IN THE CURRENT ACT; (B) RESPONDS TO COURT DECISIONS; AND (C) ESTABLISHES LEGISLATIVE INTENT.

THE BILL DOES NOT (A) CHANGE THE CURRENT BENEFIT STRUCTURE OR (B) CHANGE THE CURRENT RATE MAKING SYSTEM.

END

Sections 13-15-16 effective on passage and approval-

All other sections effective July 1, 1989

HB 347
3-2-89
PS 167

BILL INFORMATION

HB 347

Generally Revise Workers' Compensation Laws
by
Representative Clyde Smith

Section 1

Notice of Cancellation Penalty

Existing statutes require insurers to notify the Division 20 days prior to the date they intend to cancel a workers' compensation insurance policy. This allows the Division's records to accurately reflect the insurer responsible for the payment of claims when submitted to the Division. The current law provides no penalty if the insurer fails to notify the Division of the cancellation. The proposed legislation allows the Division to assess a penalty of no more than $200, and the insurer has the right to contest the assessment of such a penalty.

Section 2

Job Pool and Rehabilitation

The current definition of job pool as adopted in the 1987 Reform is not as clear as it could be and, in some cases, is not applicable. The proposed legislation is merely a change in the definition in order to make the system more workable. It also clarifies when total rehabilitation benefits begin.

Section 3

Total Rehabilitation Benefits

Temporary Total Disability benefits terminate on the date maximum medical improvement (MMI) is reached, but current law (39-71-1023) does not allow Total Rehabilitation benefits to begin until both MMI and designation of a rehabilitation provider occurs, thus leaving a possible gap. The insurer is supposed to designate a rehabilitation panel as soon as the disabled worker reaches MMI, but if a delay occurs, the worker could technically be without benefits for a period of time.

The amendment automatically begins Total Rehabilitation benefits at MMI whether or not a rehabilitation provider has been designated. The 26-week rehabilitation period does not begin until the Division is notified a provider has been designated.)

Section 4

Travel Expenses for Medical Care

Insurers have normally paid travel expenses incurred by the claimant for travel to obtain medical care. The statutes have never expressed the amount which should be paid for reasonable travel expenses. The proposed legislation sets the amount at the same rates which would be allowed for reimbursement of travel by state employees.

HB 347
3-2-89
P3 of 7

Section 5

No Notice for Benefits Reduction

The present statutes, which require insurers to provide a 14-day notice upon termination of benefits, somewhat conflict with the new reform legislation in that under the new legislation, the insurer may continue to pay biweekly benefits, but the type of benefit category changes. For example, a claimant, under the new law, can be switched from Temporary Total benefits to Total Rehabilitation benefits, and the rate of pay is exactly the same. Technically, such a change would require a 14-day notice under the existing statutes. The purpose of the proposed legislation is to clarify the point that the insurer only provide(s) the 14-day notice when all biweekly benefits are terminated. The law allows the right of appeal in other situations where the biweekly benefits of the injured worker are changed from one category to another.

Section 6

Wage Loss Waiting Period

Adds a 48 hour wage loss waiting period to the current 6 days of loss whichever is less. Addresses cases where a person works other than five 8-hour days. Allows workers to qualify for benefits sooner if they work longer hours in a given day.

Section 7, 8, and 9

Payroll Definition

PG 4 of 7

The terms wages and payroll are used in workers' compensation to both determine the amount of premium paid and to determine the amount of compensation paid in the case of a claim. The definitions in the Act of these two terms do not necessarily coincide; and therefore, the purpose of the legislation is to make sure the definition of wages and payroll are uniform.

Section 10

Limit Premium Collection

The purpose of this amendment is to place reasonable time frames on the number of years the Division can go back and assess premium or issue refunds through audit or other types of adjustments. The selection of three years is in accordance with what Unemployment Insurance is allowed to do, and at least partially eliminates a burden on the employer in the case of a premium charge and on the State Compensation Insurance Fund in the case of premium refund.

Section 11

Partners/Proprietors' Coverage

Under the Workers' Compensation Act, sole proprietors and working partners may elect to provide coverage for themselves, and the purpose of the proposed legislation is to clarify the wage base to be used if a covered sole proprietor or working partner is injured on the job. The wage base to be used will be consistent with the wage base identified by the sole proprietor or partner at the time the election for coverage is made.

Section 12

Wages for Concurrent Employment

The purpose of this section is to clarify when wages from two different employments should be aggregated in order to calculate the claimant's compensation rate. This is, in part, a codification of case law. It should be noted that for Temporary Total the State Compensation Insurance Fund does aggregate wages.

Section 13

3-2-8
PS 6

Release of Information

The Health Care Information Act enacted by the 1987 Legislature restricts the dissemination of health care information by health care providers. This restriction could require insurers to obtain written releases for health care information every 30 months--even though the injured worker signes a claim form which serves as a medical release so the treating physicians can provide information to the insurer. The medical information is obviously necessary in order to determine the compensation benefits due an injured worker. The proposed legislation in effect exempts the workers' compensation insurer from these restrictions as long as the insurer has a signed claim form.

Section 14

Failure to Submit Records Penalty

The present law requires insurers and adjusters to submit reports and information to the Insurance Compliance Bureau in order for them to effectively monitor claims. The proposed legislation subjects insurers and adjusters to a penalty of not less than $200 and not more than $500 for failing to submit the information required.

Section 15 and 16

Deleted all reference to the Workers' Compensation Court.

New Section 15

Extension of Rule Authority

New Section 16

Effective Dates -- (7/1/89 Most Sections)

Prepared by:

William R. Palmer

Interim Administrator

2/6/89

3-2-89

NAME: JOHN B ANDERSON DATE: MARCH 2ND

ADDRESS: SE 980 SKALKAHO RD HAMILTON

PHONE: 363-4138

REPRESENTING WHOM? SELF & CLAIMEES

APPEARING ON WHICH PROPOSAL: 347 + 348

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? X

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

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LABOR COMMITTEE

VISITORS' REGISTER

51st LEGISLATIVE SESSION

DATE: March 2, 1989

LEAVE PREPARED STATEMENTS WITH SECRETARY! PLEASE!!!

PRINT: NAME	REPRESENTING Name + Address	Check One: Support	Check One: Oppos
John B. Anderson	SE 980 SKALKAHO RD-HAMILTON		X HB347 " 348
Rusty Harper	Dept. of Labor + Industry	HB 391	
Bill Palmer	Workers' Comp	#HB 347 HB 348	
George Wood	Mt. Self Insurers	HB347 HB348	
Jim Van Arsdale	City of Billings	HB347	
Kay Foster	Billings Chamber	HB347	
Peg Williams	SRS	HB243	
Marie Bullock	"	"	
Bob Heiser	UFCW	[redacted]	[redacted]
Jim Murphy	Dir of Workers Comp	347 348	
Bud Clinch	Montana Logging Assoc.	347	
Keith Olson	" " "	347	
Mike Sherwood	MTLA	347+ 348	
Bob Marks		348	
Linda Smith		347	
Sue Mohr	MT Labor + Ind.	HB 391 X	

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Senator Gary C. Aklestad, on March 7, 1989, at 1:00 p.m. in room 415 of the State Capitol.

ROLL CALL

Members Present: All members were present. Senator Tom Keating, Vice-chairman, Senator Sam Hofman, Senator J.D. Lynch, Senator Gerry Devlin, Senator Bob Pipinich, Senator Dennis Nathe, Senator Richard Manning, Senator Chet Blaylock, Senator Gary Aklestad, Chairman.

Members Excused: There were no members excused.

Members Absent: There were no members absent.

Staff Present: Tom Gomez, Legislative Council Analyst.

Announcements/Discussion: There were no announcements or discussion.

HEARING ON HOUSE BILL 541

Presentation and Opening Statement by Sponsor:

Representative Gould, House District 61, Missoula, MT, stated HB 541 is an act to generally revise the law relating to vocational rehabilitation programs for persons with employment handicaps and for persons with blindness or low vision; amending sections 53-7-101 through 53-7-103, 53-7-105, 53-7-106, 53-7-301 through 53-7-303, and 53-7-306, MCA; repealing sections 53-7-309, MCA; and providing effective dates. Representative Gould stated Congress passed the 1973 Rehabilitation Act, and when Pat Williams chaired the Select Committee on Education, he was able to testify in Washington D.C. Montana has two separate division.

List of Testifying Proponents and What Group they Represent:

Maggie Bullock, Administrator of the Rehabilitation Division, representing the Department of SRS.

Testimony:

say they will not provide the service.

Closing by Sponsor:

Representative Daily urged support of HB 377.

EXECUTIVE ACTION

DISPOSITION OF HOUSE BILL 347

Discussion:

Senator Aklestad discussed the reason why the committee should reconsider previous action on House Bill 347. People could go in and retroactively apply a modification, or an experience rating to an individual. Senator Blaylock called this information to Senator Aklestad's attention. Therefore, Senator Aklestad did not sign the bill out of committee. Senator Aklestad spoke with the Labor Department, telling the department to create an amendment to satisfy the situation.

Senator Devlin moved to reconsider action on House BIll 347. The motion passed unanimously.

Senator Blaylock asked Senator Aklestad asked if the amendments meet with the department's approval. Yes

Amendments and Votes:

Senator Keating moved to accept the amendments. The amendment passed unanimously. The amendment is a happy medium between what is in the bill now and taking the amendment out completely. The amendment passed unanimously.

Senator Nathe asked if the problem with the statement is there is no amount of years the individual can go back. Yes. The amendments says: "up to one year. The division may only apply modification factors retroactively when the factor is delayed because the rating bureau has not received sufficient data from previous carriers to calculate a final modification factor."

Recommendation and Vote:

Senator Hofman moved to make a BE CONCURRED IN AS AMENDED recommendation. The motion passed unanimously.

DISPOSITION OF HOUSE BILL 541

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: March 7, 1989

	PRESENT	ABSENT	EXCUSED
SENATOR TOM KEATING	X		
SENATOR SAM HOFMAN	X		
SENATOR J.D. LYNCH	X		
SENATOR GERRY DEVLIN	X		
SENATOR BOB PIPINICH	X		
SENATOR DENNIS NATHE	X		
SENATOR RICHARD MANNING	X		
SENATOR CHET BLAYLOCK	X		
SENATOR GARY AKLESTAD	X		

SENATE STANDING COMMITTEE REPORT

March 7, 1989

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration HB 347 (third reading copy -- blue), respectfully report that HB 347 be amended and as so amended be concurred in:

Sponsor: Smith (Manning)

1. Page 16, line 13.
Following: "factors"
Insert: "up to one year. The division may only apply modification factors retroactively when the factor is delayed because the rating bureau has not received sufficient data from previous carriers to calculate a final modification factor"

AND AS AMENDED BE CONCURRED IN

Signed: _____
Gary C. Aklestad, Chairman

Y.C. 3/7/89 4:20 p.m.

scrhb347.307

HOUSE BILL NO. 347

INTRODUCED BY SMITH

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO WORKERS' COMPENSATION; ALLOWING ASSESSMENT OF A PENALTY FOR FAILURE TO GIVE PROPER NOTICE OF CANCELLATION OF A POLICY; CLARIFYING A WORKER'S JOB POOL AREA; CLARIFYING A WORKER'S ENTITLEMENT TO TOTAL REHABILITATION BENEFITS; ALLOWING REIMBURSEMENT FOR EXPENSES INCURRED IN TRAVEL TO MEDICAL PROVIDERS; CLARIFYING THAT AN INSURER IS ~~NOT~~ REQUIRED TO GIVE NOTICE PRIOR TO REDUCING BIWEEKLY BENEFITS; COORDINATING THE DEFINITIONS OF WAGES, PAYROLL, AND EARNINGS; ALLOWING THE DIVISION TO RETROACTIVELY APPLY EXPERIENCE MODIFICATION FACTORS TO THE EXPERIENCE RATING SYSTEM; PROVIDING FOR PENALTIES; ALLOWING ELECTION OF LEVELS OF COVERAGE BY PARTNERS AND SOLE PROPRIETORS; DEFINING WAGES FOR GOVERNMENT EMPLOYMENTS; ALLOWING DISCLOSURE OF HEALTH CARE INFORMATION BY HEALTH CARE PROVIDERS TO INSURERS; PROVIDING A PENALTY FOR NOT FILING REPORTS OF ACCIDENTS; PROVIDING THAT A WORKERS' COMPENSATION JUDGE MAY BE DISQUALIFIED FROM HEARING A MATTER BEFORE HIM; AMENDING SECTIONS 39-71-116, 39-71-118, 39-71-123, 39-71-302, 39-71-307, 39-71-609, 39-71-704, 39-71-736, 39-71-1011, 39-71-1017, 39-71-1023, 39-71-2205, 39-71-2304, ~~39-71-2901,~~ ~~39-71-2903,~~ AND 50-16-527, MCA; AND PROVIDING FOR EFFECTIVE DATES AND RETROACTIVE APPLICABILITY DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-2205, MCA, is amended to read:

"**39-71-2205. Policy ~~remains~~ in effect until canceled or replaced -- twenty-day notification of cancellation required -- penalty.** (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the division at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) (a) The division may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to division rules."

Section 2. Section 39-71-1011, MCA, is amended to read:

"39-71-1011. Definitions. As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means one who has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

(3) "I.W.R.P." means an individualized, written rehabilitation program prepared by the department of social and rehabilitation services.

(4) "Rehabilitation benefits" means benefits provided in 39-71-1003 and 39-71-1023 through 39-71-1025.

(5) "Rehabilitation provider" means a rehabilitation counselor, other than the department of social and rehabilitation services, certified by the board for rehabilitation certification and designated by the insurer to the division.

(6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services to assist a disabled worker to return to work.

(7) (a) "Worker's job pool" means those jobs typically

available for which a worker is qualified, consistent with the worker's age, education, vocational experience and aptitude and compatible with the worker's physical capacities and limitations as the result of the worker's injury. Lack of immediate job openings is not a factor to be considered.

(b) A worker's job pool may be either local or statewide, as follows:

(i) a local job ~~is one either in a central city that has within its economically integrated geographical area a population of less than 50,000 or in a city with a population of more than 50,000 as determined by the division~~ pool is the job service office area that includes the worker's residence; ~~or~~ and

(ii) ~~a~~ the statewide job pool is ~~one anywhere in~~ the state of Montana."

Section 3. Section 39-71-1023, MCA, is amended to read:

"39-71-1023. Total rehabilitation benefits during period of rehabilitation services -- limitation -- termination. (1) A worker who no longer is temporarily totally disabled but meets the definition of a disabled worker may be eligible for total rehabilitation benefits.

(2) Eligibility for total rehabilitation benefits begins on the date of maximum healing ~~or~~ and continues for a

period not to exceed 26 weeks after the date notice is given to the division by the insurer that a rehabilitation provider has been designated~~,-whichever-is-later~~.

(3) Benefits must be paid at the disabled worker's temporary total disability rate. ~~for-a-period-not--exceeding 26--weeks--from-the-date-of-eligibility,-except-that-the~~ The division may extend the benefit period for good cause. The insurer may extend the ~~benefits~~ benefit period without division approval but must notify the division of the extension.

(4) Total rehabilitation benefits under this section terminate when:

(a) a worker returns to work;

(b) a worker is qualified to return to work under the priorities in 39-71-1012 pursuant to a division order; or

(c) an I.W.R.P. is submitted to the division by the department of social and rehabilitation services.

(5) The insurer shall provide written notice to the worker and division that benefits have been terminated."

Section 4. Section 39-71-704, MCA, is amended to read:

"**39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates.** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following ~~shall~~ must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury PURSUANT TO RULES ADOPTED BY THE DIVISION. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, ~~shall~~ must be established annually by the workers' compensation division and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be

based on the median fees as billed to the state compensation insurance fund during the year preceding the adoption of the schedule. The division shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules ~~shall~~ must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the division shall establish rates for hospital services necessary for the treatment of injured workers. Approved rates must be in effect for a period of 12 months from the date of approval. The division may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, and ending January 1, 1990, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), the hospital rates payable by insurers must be limited to those set in January 1988, until December 31, 1989."

Section 5. Section 39-71-609, MCA, is amended to read:

"39-71-609. Denial of claim after payments made or termination of all **benefits** OR REDUCTION TO PARTIAL BENEFITS **by insurer -- fourteen days' notice required.** If an insurer

determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the division. FOR INJURIES OCCURRING PRIOR TO JULY 1, 1987, AN INSURER MUST GIVE 14 DAYS' WRITTEN NOTICE TO THE CLAIMANT BEFORE REDUCING BENEFITS FROM TOTAL TO PARTIAL. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work."

Section 6. Section 39-71-736, MCA, is amended to read:

"39-71-736. Compensation -- from what date paid. (1) (a) No compensation may be paid for the first 48 HOURS OR 6 ~~days--loss--of--wages~~ consecutive days DAYS' LOSS OF WAGES, WHICHEVER IS LESS, THAT the claimant is totally disabled and unable to work due to an injury. A claimant is eligible for compensation starting with the 7th day ~~of--wage loss~~.

(b) However, separate benefits of medical and hospital services ~~shall~~ must be furnished from the date of injury.

(2) For the purpose of this section, an injured worker is not considered to ~~have--a--wage--loss~~ be entitled to compensation benefits if the worker is receiving sick leave

benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period."

Section 7. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is

a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(4) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(5) "Days" means calendar days, unless otherwise specified.

(6) "Department" means the department of labor and industry.

(7) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(8) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(9) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under

compensation plan No. 2, the state compensation insurance fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(10) "Invalid" means one who is physically or mentally incapacitated.

(11) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(12) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(13) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year~~;~~. ~~provided, that an~~ However, an estimate may be made by the division for any employer starting in business ~~where~~ if no average payrolls are available~~, such~~. This estimate is to be adjusted by additional payment by the employer or refund by the division, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(14) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(15) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

(16) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(17) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(18) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(19) "Reasonably safe place to work" means that the

place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(20) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(21) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(22) "Year", unless otherwise specified, means calendar year."

Section 8. Section 39-71-302, MCA, is amended to read:

"**39-71-302. What included in computing payroll.** In computing the payroll, ~~the entire compensation~~ all wages, as defined in 39-71-123, received by every worker employed under this chapter ~~is~~ are included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise."

Section 9. Section 39-71-1017, MCA, is amended to read:

"**39-71-1017. Rehabilitation panel report.** (1) The rehabilitation panel shall:

(a) review all records, statements, and other

pertinent information; and

(b) prepare a report to the division, with copies to the insurer and worker.

(2) The report must:

(a) identify the first appropriate rehabilitation option by following the priorities set forth in 39-71-1012; and

(b) contain findings of why a higher listed priority, if any, is not appropriate.

(3) Depending on which option the panel identifies as appropriate, the report also must contain findings that:

(a) identify jobs in the local or statewide job pool and the worker's anticipated ~~earnings~~ wages from each job;

(b) describe an appropriate on-the-job training program, the worker's anticipated ~~earnings~~ wages, and anticipated insurer's contribution, if any;

(c) describe an appropriate retraining program, short- or long-term, the employment opportunities anticipated upon the worker's completion of the program, and the worker's anticipated ~~earnings~~ wages; or

(d) describe the worker's potential for specific self-employment, limitations the worker might have in such self-employment and any assistance necessary, and the worker's anticipated ~~earnings~~ wages.

(4) An insurer or a worker on his own motion may

submit information to the panel prior to the time the panel issues its final report."

Section 10. Section 39-71-2304, MCA, is amended to read:

"39-71-2304. Determination of rates and classifications by division. (1) The division is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience may be necessary or expedient, provided that no change in the classification or rates prescribed ~~shall~~ may be effective until 30 days after the date of the order making such change.

(2) The industrial insurance program ~~shall~~ must be neither more nor less than self-supporting. Employments affected by the provisions hereof ~~shall~~ must be divided by the division into classes, whose rates may be readjusted at such times as the division may actuarially determine. Separate accounts ~~shall~~ must be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation and dividends, the industrial insurance expendable trust fund ~~shall~~ must be one and indivisible.

(3) The division shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with

maintenance of an actuarially sound industrial insurance fund and the creation of actuarially sound surplus and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk and shall utilize the experience and information afforded to it.

(4) In addition, compensation plan No. 3 ~~shall~~ must use an experience rating system for employers enrolled under it. This system ~~shall~~ must reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume discount. The division may retroactively apply experience modification factors UP TO 1 YEAR. THE DIVISION MAY ONLY APPLY MODIFICATION FACTORS RETROACTIVELY WHEN THE FACTOR IS DELAYED BECAUSE THE RATING BUREAU HAS NOT RECEIVED SUFFICIENT DATA FROM PREVIOUS CARRIERS TO CALCULATE A FINAL MODIFICATION FACTOR.

(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance expendable trust fund allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the division. The amounts of such reserves and

surplus ~~shall~~ must be as determined from time to time by the division to be adequate but not excessive for the purposes intended.

(6) The division shall charge a minimum annual premium on each contract and policy of insurance sufficient to cover the cost of administering the contract or policy.

(7) (a) Except in a case of fraud, the division may not assess an additional quarterly premium later than 3 years after the date on which the quarterly premium became due.

(b) An employer may not receive a refund or an adjustment later than 3 years after the date on which the quarterly premium became due."

Section 11. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and workman defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations

while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; or

(e) an airman or other person employed as a volunteer

under 67-2-105.

(2) (a) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered~~,--and--no~~ and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (d). A partner or sole proprietor ~~shall-be-deemed~~ is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the ~~insurance-carrier-shall assume-a-salary-or-wage-of--such--electing--employee--to--be~~ electing employer may elect not less than $900 a month and

not more than 1 1/2 times the average weekly wage as defined in this chapter."

Section 12. Section 39-71-123, MCA, is amended to read:

"**39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee travel expense reimbursements or allowances for meals, lodging, travel, and subsistence;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual ~~earnings~~ WAGES must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual ~~earnings~~ WAGES in his regular employment, except self-employment as a sole proprietor or partner WHO ELECTED NOT TO BE COVERED, from which he is disabled by the injury incurred.

(c) The compensation benefits for an employee working

at two or more concurrent remunerated employments must be based on the aggregate of average actual ~~earnings~~ WAGES of all employments, except self-employment as a sole proprietor or partner WHO ELECTED NOT TO BE COVERED, from which the employee is disabled by the injury incurred."

Section 13. Section 50-16-527, MCA, is amended to read:

"**50-16-527. Patient authorization -- retention -- effective period -- exception.** (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under 50-16-528. Health care information disclosed under such an authorization is otherwise subject to this part. An authorization written after October 1, 1987, becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does

not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider. The disclosure authorized by this subsection relates only to information concerning the claimant's condition. This authorization is effective only as long as the claimant is ~~entitled to~~ CLAIMING benefits."

Section 14. Section 39-71-307, MCA, is amended to read:

"39-71-307. Employers and insurers to file reports of accidents -- penalty. (1) Every employer of labor and every insurer is hereby required to file with the division, under such rules as the division may from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the division in such form and such detail as the division shall from time to time prescribe and shall make specific answers to all questions required by the division under its rules; except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

(2) Every insurance company transacting business under this chapter shall, at the time and in the manner prescribed by the division, make and file with the division such reports of accidents as the division may require.

(3) An employer, insurer, or adjuster who refuses or neglects to submit to the division reports necessary for the proper review of a claim, as provided in subsection (1), may be assessed a penalty of not less than $200 or more than $500 for each offense. The division shall assess and collect the penalty. An insurer may contest a penalty assessment in a hearing conducted according to division rules."

~~**Section 15.** Section 39-71-2901, MCA, is amended to read:~~

~~"39-71-2901. Location of office -- court powers. (1) The principal office of the workers' compensation judge shall be is in the city of Helena.~~

~~(2) The workers' compensation court has power to:~~

~~(a) preserve and enforce order in its immediate presence;~~

~~(b) provide for the orderly conduct of proceedings before it and its officers;~~

~~(c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;~~

~~(d) compel the attendance of persons to testify; and~~

~~(e)--punish-for-contempt-in-the-same-manner-and-by--the same-procedures-as-in-district-court.~~

~~(3)--The----workers'----compensation----judge---is---an administrative-law-judge.--The-position-is-created--by--law, and--the--powers-and-duties-are-limited-to-those-provided-by applicable-statute.~~"

~~**Section 16.**--Section-39-71-2903,--MCA,--is--amended--to read:~~

~~"39-71-2903.--Administrative-procedure-act-and-rules-of evidence---applicable--------disqualification---of--workers' compensation-judge.-(1)-All-proceedings-and-hearings--before the--workers'-compensation-judge-shall-must-be-in-accordance with---the---appropriate---provisions---of----the----Montana Administrative-Procedure-Act.~~

~~(2)--The-workers'-compensation-judge-is-bound-by-common law-and-statutory-rules-of-evidence.~~

~~(3)--The----workers'----compensation---judge---may---be disqualified-from-a-matter-before-him--in--the--same--manner that--a--hearing-examiner-may-be-disqualified-under-2-4-611. If--a--party---requests---disqualification,---the---workers' compensation--judge--shall--promptly--refer--the--issue-to-a district-court-judge,-who-shall-conduct--a--hearing--on--the request.--If--the--district--court-judge-finds-that-there-is sufficient--cause--for--disqualification--of--the---workers' compensation--judge,--the--district-court-judge-may-hear-the merits-of-the-matter-himself-or-may-invite-another--district court-judge-to-accept-jurisdiction-of-the-matter.~~"

NEW SECTION. **Section 15.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **Section 16.** Effective dates -- retroactive applicability. (1) [Sections 13 ~~and-15-through~~ ~~18~~, 15, AND 16] are effective on passage and approval.

(2) ALL OTHER SECTIONS OF [THIS ACT] ARE EFFECTIVE JULY 1, 1989.

~~(2)--(a)~~(3) [Section 13] applies retroactively, within the meaning of 1-2-109, to all requests for health care information in workers' compensation claims.

~~(b)--[Sections-15-and-16]-apply--retroactively,--within the--meaning--of--1-2-109,--to--any--case-pending-before-the workers'-compensation-judge-that-has-not-been-heard--on--the merits.~~

-End-